

# EXHIBIT B

**Issue Paper 3: Gainful Employment Session 2: February 14-18, 2022**

Available at:

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## UNITED STATES DEPARTMENT OF EDUCATION

## OFFICE OF POSTSECONDARY EDUCATION

**Issue Paper 3: Gainful Employment****Session 2: February 14-18, 2022****Issue:** Gainful Employment**Statutory cites:** §101(b)(1), 102(b)(1)(A)(i), and 102(c)(1)(A) of the Higher Education Act of 1965, as amended**Regulatory cites:** 34 CFR 600.10, 600.21, Subpart Q, 668.43**Summary of issues:**

The Higher Education Act (HEA) requires some programs and institutions (generally all programs at proprietary institutions and any non-degree programs at public or private nonprofit institutions) to “prepare students for gainful employment in a recognized occupation” to access Title IV federal financial aid. However, for many years the standards by which institutions could demonstrate compliance with those requirements were largely undefined. In 2011, the Department of Education (Department) conducted a rulemaking and issued a regulation that established such standards for gainful employment (GE) programs, based in part on the debt that graduates incurred in attending the program, relative to the earnings they received after completion. The regulation was reissued in 2014 following a court challenge, based on a similar debt-to-earnings structure for GE programs. When the data were first released in January 2017, over 800 programs, collectively enrolling hundreds of thousands of students, did not pass the GE standards.

In summer 2019, the Department rescinded the 2014 rule nearly in its entirety. However, the Department remains concerned about the prevalence of programs that fail to help students obtain sufficiently remunerative employment to justify the investment of their time and resources, and often leave students too deeply in debt relative to their earnings to afford to repay.

A growing body of academic research has identified persistent problems in GE programs (defined by the HEA as certificate programs and degree programs at proprietary institutions), including poor labor market outcomes, high levels of borrowing, and low loan repayment rates. For example, [research](#) has found that some postsecondary certificates have very low or even negative labor market returns for their graduates. This finding is echoed in the most recent College Scorecard data, which show that roughly 19 percent of undergraduate certificate programs have median earnings among working graduates that are less than 150 percent of the poverty line. Multiple studies [show](#) that for-profit college students, in particular, see much lower employment and earnings gains than students in programs at non-profit colleges.

Additionally, the most recently available data published via the College Scorecard show that the median cumulative loan debt of students in many programs is high relative to the amounts that students earn, especially in programs offered by proprietary institutions. For example, median cumulative borrowing levels exceed median annual earnings at about 12 percent of undergraduate degree programs (among those where data are available), or 9 percent among public and nonprofit undergraduate degree programs. Among programs at proprietary schools, however, the analogous figures are 28 percent for

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associate's and 42 percent for bachelor's degree programs. [Multiple studies](#) have found that, accounting for differences in student characteristics, borrower outcomes like repayment rates and the likelihood of default are worse in the proprietary sector. Finally, [research indicates](#) that federal accountability efforts can be effective in driving improved student outcomes, particularly for students at (or who would have attended) for-profit colleges.

We seek feedback on the overall state of the GE sector of higher education, including the greatest problems that students who enroll in GE programs currently face. We also seek feedback on the appropriate framework for the GE standards, including the metrics that should be utilized to assess programmatic outcomes; the sanctions that should be applied; and the reporting requirements that should be instituted to assess GE programs. Finally, we request feedback on the need for improved consumer information about the outcomes of institutions of higher education, as well as GE programs' failure to meet required standards, so that prospective and enrolled students are aware of those outcomes and the potential for loss of eligibility of federal financial aid.

### **Proposal:**

The Department proposes to establish a framework for assessing whether a program prepares students for gainful employment in a recognized occupation. Specifically, we propose:

Under §600.10, Date, extent, duration, and consequence of eligibility, and §600.20, Updating application information:

1. **A requirement that institutions report updates or changes to their gainful employment programs;** and a requirement that institutions update their certifications pursuant to the gainful employment rules. This will ensure transparency for the Department into the program offerings at institutions.

Under Subpart Q, Gainful Employment Programs:

1. **Clarity as to the scope and purpose** of these regulations, which govern the determination of whether a gainful employment program is eligible for title IV, HEA funds, as well as outline reporting requirements for institutions.
2. **Definitions to explain terminology used throughout the rule.** This terminology includes the annual and discretionary earnings rate, which make up the debt-to-earnings (D/E) rates; the definition of a GE program and of a program's classification of instructional program (CIP) code and credential level; a small program and small program rates to assess the rates for all programs within a credential level otherwise too small to produce D/E rates; the cohort period used to construct the D/E measures; and the Federal agency with earnings data, among others.
3. **A framework for assessing gainful employment programs.** As under the 2014 GE rule, the Department will calculate a discretionary and an annual debt-to-earnings rate. Institutions with a discretionary D/E rate of 20 percent or less, or an annual D/E rate of 8 percent or less, will be considered passing under the metric. A program that fails the D/E rates in two out of any three consecutive award years becomes ineligible for title IV, HEA program funds.
4. **A process for calculating D/E rates.** Rates are calculated based on annual loan payment amounts amortized over a 10-, 15-, or 20-year period, depending on the credential level of the program, using the debts for or on behalf of graduates of the program, and using an interest rate based on an average of the rates for the three or six years prior, based on undergraduate or graduate Unsubsidized loans, as appropriate. The Secretary also obtains the aggregate, median

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earnings for each program from another Federal agency. The Secretary calculates a small program rate based on all of the small programs in a credential level, except that the small program rate is not used to determine annual eligibility for those programs.

- 5. Procedures for issuing D/E rates.** The rates will be calculated based on administrative data, which institutions will have the opportunity to update prior to calculation of the rates. As previously noted, earnings data will be obtained from another Federal agency, and the Department will then calculate the D/E rates after removing from the debt calculation the number of students who were not matched in the earnings calculation.
- 6. A process for issuing determinations of D/E rates.** The Secretary will notify institutions of the D/E rates for each of their GE programs and for their small programs. For GE programs with D/E rates, the Department will also notify the institution of whether the program is passing, failing, or ineligible.
- 7. Consequences of the D/E rates.** For programs that fail the D/E rates, institutions will be required to provide a warning to current and prospective students. The warnings will be hosted through a website maintained by the Secretary; and institutions will be required to share information to access that website along with a warning. The Department will require students seeking to enroll in a failing program to provide an attestation through the website. For ineligible programs, an institution is prohibited from disbursing title IV, HEA funds to students, and the institution may not reestablish eligibility for such programs for at least three years.
- 8. Establish reporting requirements.** Some additional information will need to be reported to the Department to ensure D/E rates can be calculated for GE programs. This includes student-level information on their programs, attendance and withdrawal/completion dates, private and institutional loan debt; and tuition, fees, books, supplies, and equipment amounts.
- 9. Specify supplementary performance measures.** The Department also proposes to include certain data elements in its consideration of an institution's application to participate in the Federal aid programs. Prior to issuing a new Program Participation Agreement to an institution, the Secretary will assess, and may take into consideration, the withdrawal rates of the institution; GE D/E rates and small program rates, if applicable; instructional expenditures of the institution; and accreditor- or state-required job placement rates, if applicable, of any institution.
- 10. Outline key certification requirements for GE programs.** The proposed regulations include a timeline for institutions to certify that GE programs meet certain other requirements, such as complying with the timelines for reestablishing eligibility and being accredited or included in the scope of an institution's accreditation.

Finally, the Department proposes to establish certain disclosure requirements for all institutions. Under §668.43, Institutional and programmatic information, we propose to:

- 1. Provide students at all institutions with information about their programs' outcomes.** On a website hosted by the Secretary (also where GE warnings will be posted), students and prospective students will be able to access key information to help inform their decisions about where to enroll and what to study. This website may provide information on completion rates, median debt, loan repayment, and median earnings, as well as critical context for that information, such as the occupations for which the program prepares students, the length of the program, enrollment in the program, the cost of the program, and borrowing rates. Institutions will provide the information needed to access this website to prospective and enrolled students to help inform college choices.

**Proposed Regulations Redline**

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**§ 600.10 Date, extent, duration, and consequence of eligibility.**

\* \* \*

**(c) Educational programs.**

**(1)** An eligible institution that seeks to establish the eligibility of an educational program must -

- (i)** Pursuant to a requirement regarding additional programs included in the institution's program participation agreement under 34 CFR 668.14, obtain the Secretary's approval;
- (ii)** For a direct assessment program under 34 CFR 668.10, and for a comprehensive transition and postsecondary program under 34 CFR 668.232, obtain the Secretary's approval; and
- (iii)** For a first direct assessment program under 34 CFR 668.10, the first direct assessment program offered at each credential level, and for a comprehensive transition and postsecondary program under 34 CFR 668.232, obtain the Secretary's approval; and,
- (iv)** For a gainful employment program under 34 CFR part 668, subpart Q of this chapter, update its application under § 600.21, and meet any time restrictions that prohibit the institution from establishing or reestablishing the eligibility of the program as may be required under 34 CFR 668.407.

**(2)** Except as provided under § 600.20(c), an eligible institution does not have to obtain the Secretary's approval to establish the eligibility of any program that is not described in paragraph (c)(1) of this section.

**§ 600.21 Updating application information.**

**(a) Reporting requirements.** Except as provided in paragraph (b) of this section, an eligible institution must report to the Secretary in a manner prescribed by the Secretary no later than 10 days after the change occurs, of any change in the following:

\* \* \*

**(11)** For any program that is required to provide training that prepares a student for gainful employment in a recognized occupation -

- (i)** Establishing the eligibility or reestablishing the eligibility of the program;
- (ii)** Discontinuing the program's eligibility;
- (iii)** Ceasing to provide the program for at least 12 consecutive months;
- (iv)** Losing program eligibility under § 600.40; or
- (v)** Changing the program's name, CIP code, or credential level; or
- (vi)** Updating the certification pursuant to 34 CFR 668.410.

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**Subpart Q—Gainful Employment (GE) Programs**

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**§ 668.401 Scope and purpose.**

This subpart applies to an educational program offered by an eligible institution that prepares students for gainful employment in a recognized occupation, and establishes the rules and procedures under which--

(a) The Secretary determines that the program is eligible for title IV, HEA program funds; and

(b) An institution reports information about the program to the Secretary.

**§ 668.402 Definitions.**

The following definitions apply to this subpart.

Annual earnings rate. The percentage of a GE program's annual loan payment compared to the annual earnings of the students who completed the program, as calculated under §668.404.

Classification of instructional program (CIP) code. A taxonomy of instructional program classifications and descriptions developed by the U.S. Department of Education's National Center for Education Statistics (NCES). Specific programs offered by institutions are classified using a six-digit CIP code. However, for purposes of this subpart, the Secretary uses the first four digits of the CIP code to identify gainful employment programs that have comparable content and objectives.

Cohort period. The set of award years used to identify a cohort of students who completed a program and whose debt and earnings outcomes are used to calculate debt-to earnings rates. The Secretary uses a two-year cohort period to calculates the debt-to-earnings rates for a program when the number of students (after exclusions identified in §668.404(e)) in the two-year cohort period is 30 or more. The Secretary uses a four-year cohort period to calculate the debt-to-earnings rates when the number of students completing the program in the two-year cohort period is less than 30 and when the number of students completing the program in the four-year cohort period is 30 or more. The cohort period covers consecutive award years that are--

(1) For the two-year cohort period--

(i) The third and fourth award years prior to the award year for which the D/E rates are calculated pursuant to §668.404. For example, if D/E rates are calculated for award year 2021-2022, the two-year cohort period is award years 2017-2018 and 2018-2019; and earnings data used will be for calendar years 2020 and 2021; or

(ii) For a program whose students are required to complete a medical or dental internship or residency, the sixth and seventh award years prior to the award year for which the D/E rates are calculated. For example, if D/E rates are calculated for award year 2021-2022, the two-year cohort period is award years 2014-2015 and 2015-2016. For this purpose, a required medical or dental internship or residency is a supervised training program that--

(A) Requires the student to hold a degree as a doctor of medicine or osteopathy, or as a doctor of dental science;

(B) Leads to a degree or certificate awarded by an institution of higher education, a hospital, or a health care facility that offers post-graduate training; and

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**(C) Must be completed before the student may be licensed by a State and board certified for professional practice or service.**

**(2) For the four-year cohort period—**

**(i) The third, fourth, fifth, and sixth award years prior to the award year for which the D/E rates are calculated pursuant to §668.404. For example, if D/E rates are calculated for award year 2021-2022, the two-year cohort period is award years 2015-2016, 2016-2017, 2017-2018, and 2018-2019; and earnings data used will be for 2020 and 2021; or**

**(ii) For a program whose students are required to complete a medical or dental internship or residency, the sixth, seventh, eighth, and ninth award years prior to the award year for which the D/E rates are calculated. For example, if D/E rates are calculated for award year 2021-2022, the four-year cohort period is award years 2012-2013, 2013-2014, 2014-2015, and 2015-2016. For this purpose, a required medical or dental internship or residency is a supervised training program that--**

**(A) Requires the student to hold a degree as a doctor of medicine or osteopathy, or as a doctor of dental science;**

**(B) Leads to a degree or certificate awarded by an institution of higher education, a hospital, or a health care facility that offers post-graduate training; and**

**(C) Must be completed before the student may be licensed by a State and board certified for professional practice or service.**

*Credential level.* The level of the academic credential awarded by an institution to students who complete the program. For the purposes of this subpart, the undergraduate credential levels are: undergraduate certificate or diploma, associate degree, bachelor's degree, and post-baccalaureate certificate; and the graduate credential levels are graduate certificate (including a postgraduate certificate), master's degree, doctoral degree, and first-professional degree (e.g., MD, DDS, JD).

*Debt-to-earnings rates (D/E rates).* The discretionary earnings rate and annual earnings rate as calculated under §668.404.

*Discretionary earnings rate.* The percentage of a GE program's annual loan payment compared to the discretionary earnings of the students who completed the program, as calculated under §668.404.

*Federal agency with earnings data.* A Federal agency with which the Department enters into an agreement to access earnings data for the D/E rates. The agency must have data sufficient to match with at least 90 percent of title IV graduates, and may include the Treasury Department (including the Internal Revenue Service), the Social Security Administration (SSA), the Department of Health and Human Services (HHS), and/or the Census Bureau.

*Gainful employment program (GE program).* An educational program offered by an institution under §668.8(c)(3) or (d) and identified by a combination of the institution's six-digit Office of Postsecondary Education ID (OPEID) number, the program's four-digit CIP code as assigned by the institution or determined by the Secretary, and the program's credential level.

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Length of the program. The amount of time in weeks, months, or years that is specified in the institution's catalog, marketing materials, or other official publications for a student to complete the requirements needed to obtain the degree or credential offered by the program.

Poverty Guideline. The Poverty Guideline for a single person in the continental United States as published by the U.S. Department of Health and Human Services and available at <http://aspe.hhs.gov/poverty> or its successor site.

Prospective student. An individual who has contacted an eligible institution for the purpose of requesting information about enrolling in a program or who has been contacted directly by the institution or by a third party on behalf of the institution about enrolling in a program.

Small program. A GE program for which the number of students completing the program in the two- and four-year cohort periods is fewer than 30.

Small program rates. The discretionary earnings rate and annual earnings rate calculated on an aggregate basis for all small programs at an institution within the same credential level in accordance with §668.404(g).

Student. An individual who received title IV, HEA program funds for enrolling in the GE program.

Title IV loan. A loan authorized under the William D. Ford Direct Loan Program (Direct Loan).

**§ 668.403 Gainful employment framework.**

**(a) General.** A program provides training that prepares students for gainful employment in a recognized occupation if the program--

**(1)** Satisfies the applicable certification requirements in §668.414; and

**(2)** Is not an ineligible program under the D/E rates.

**(b) Debt-to-earnings rates (D/E rates).** For each award year the Secretary calculates two D/E rates for a GE program, the discretionary earnings rate and the annual earnings rate, using the procedures in §§668.404 through 668.406.

**(c) Outcomes of the D/E rates.**

**(1) A GE program passes the D/E rates if--**

**(i) Its discretionary earnings rate is less than or equal to 20 percent; or**

**(ii) Its annual earnings rate is less than or equal to 8 percent.**

**(2) A GE program fails the D/E rates if--**

**(i) Its discretionary earnings rate is greater than 20 percent or the income for the denominator of the rate (discretionary earnings) is negative or zero; and**

**(ii) Its annual earnings rate is greater than 8 percent or the denominator of the rate (annual earnings) is zero.**

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(3) A GE program becomes ineligible, subject to paragraph (c)(4), if it fails the D/E rates in two out of any three consecutive award years for which the program's D/E rates are calculated, except that failing the small program rate does not make those small programs ineligible.

(4) If the Secretary does not calculate or issue D/E rates for a program for an award year, or calculates only a small program rate with respect to that program, the program receives no result under the D/E rates measure for that award year and remains in the same status under the D/E rates as the previous award year.

**§ 668.404 Calculating D/E rates.**

(a) General. Except as provided under paragraphs (f) and (g) of this section, for each award year, the Secretary calculates D/E rates for a GE program as follows:

(1) Discretionary earnings rate = annual loan payment / (the median annual earnings – (1.5 x Poverty Guideline)). For the purposes of this paragraph, the Secretary applies the Poverty Guideline for the calendar year immediately following the calendar year for which annual earnings are obtained under paragraph (c) of this section.

(2) Annual earnings rate = annual loan payment / the median annual earnings.

(b) Annual loan payment. The Secretary calculates the annual loan payment for a GE program by--

(1)(i) Determining the median loan debt of the students who completed the program during the cohort period, based on the lesser of the loan debt incurred by each student as determined under paragraph (d)(1) of this section and the total amount for tuition and fees and books, equipment, and supplies for each student as determined under paragraph (d)(2) of this section;

(ii) Removing, if applicable, the appropriate number of highest loan debts as described in §668.404(b)(1)(ii); and

(iii) Calculating the median of the remaining amounts.

(2) Amortizing the median loan debt--

(i)

(A) Over a 10-year repayment period for a program that leads to an undergraduate certificate, a post-baccalaureate certificate, an associate degree, or a graduate certificate;

(B) Over a 15-year repayment period for a program that leads to a bachelor's degree or a master's degree; or

(C) Over a 20-year repayment period for any other program; and

(ii) Using an annual interest rate that is the average of the annual statutory interest rates on Federal Direct Unsubsidized Loans that were in effect during—

(A) The three consecutive award years, ending in the final year of the cohort period, for undergraduate certificate programs, post-baccalaureate certificate programs, and

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associate degree programs. For these programs, the Secretary uses the Federal Direct Unsubsidized Loan interest rate applicable to undergraduate students;

(B) The three consecutive award years, ending in the final year of the cohort period, for graduate certificate programs and master's degree programs. For these programs, the Secretary uses the Federal Direct Unsubsidized Loan interest rate applicable to graduate students;

(C) The six consecutive award years, ending in the final year of the cohort period, for bachelor's degree programs. For these programs, the Secretary uses the Federal Direct Unsubsidized Loan interest rate applicable to undergraduate students; and

(D) The six consecutive award years, ending in the final year of the cohort period, for doctoral programs and first professional degree programs. For these programs, the Secretary uses the Federal Direct Unsubsidized Loan interest rate applicable to graduate students.

Note to paragraph (b)(2)(ii): For example, for an undergraduate certificate program, if the two-year cohort period is award years 2017-2018 and 2018-2019, the interest rate would be the average of the interest rates for the years from 2016-2017 through 2018-2019.

(c) Annual earnings.

(1) The Secretary obtains from a Federal agency with earnings data, under §668.405, the most currently available median annual earnings of the students who completed the GE program during the cohort period and who are not excluded under paragraph (e) of this section; and

(2) The Secretary uses the median annual earnings to calculate the D/E rates.

(d) Loan debt and assessed charges.

(1) In determining the loan debt for a student, the Secretary includes--

(i) The amount of title IV loans that the student borrowed (total amount disbursed less any cancellations or adjustments) for enrollment in the GE program, including Direct PLUS Loans made to parents of dependent students but excluding Direct Unsubsidized Loans that were converted from TEACH Grants;

(ii) Any private education loans as defined in 34 CFR 601.2, including private education loans made by the institution, that the student borrowed for enrollment in the program and that are required to be reported by the institution under §668.408; and

(iii) The amount outstanding, as of the date the student completes the program, on any other credit (including any unpaid charges) extended by or on behalf of the institution for enrollment in any GE program attended at the institution that the student is obligated to repay after completing the GE program, including extensions of credit described in clauses (1) and (2) of the definition of, and excluded from, the term "private education loan" in 34 CFR 601.2;

(2) The Secretary attributes all the loan debt incurred by the student for enrollment in any--

(i) Undergraduate GE program at the institution to the highest credentialed undergraduate GE program subsequently completed by the student at the institution as of the end of the most recently completed award year prior to the calculation of the D/E rates under this section; and

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(ii) Graduate GE program at the institution to the highest credentialed graduate GE program completed by the student at the institution as of the end of the most recently completed award year prior to the calculation of the D/E rates under this section; and

(3) The Secretary excludes any loan debt incurred by the student for enrollment in programs at other institutions. However, the Secretary may include loan debt incurred by the student for enrollment in GE programs at other institutions if the institution and the other institutions are under common ownership or control, as determined by the Secretary in accordance with 34 CFR 600.31.

(e) Exclusions. The Secretary excludes a student from both the numerator and the denominator of the D/E rates calculation if the Secretary determines that--

(1) One or more of the student's title IV loans are under consideration by the Secretary, or have been approved, for a discharge on the basis of the student's total and permanent disability, under 34 CFR 674.61, 682.402, or 685.212;

(2) The student was enrolled full-time in any other eligible program at the institution or at another institution during the calendar year for which the Secretary obtains earnings information under paragraph (c) of this section;

(3) For undergraduate GE programs, the student completed a higher credentialed undergraduate GE program at the institution subsequent to completing the program as of the end of the most recently completed award year prior to the calculation of the D/E rates under this section;

(4) For graduate GE programs, the student completed a higher credentialed graduate GE program at the institution subsequent to completing the program as of the end of the most recently completed award year prior to the calculation of the D/E rates under this section; or

(5) The student died.

(f) D/E rates not issued. The Secretary does not issue D/E rates for a GE program under §668.405 if--

(1) After applying the exclusions in paragraph (e) of this section, fewer than 30 students completed the program during the two-year or four-year cohort period, except as provided in paragraph (g); or

(2) The Federal agency with earnings data does not provide the median earnings for the program as provided under paragraph (c) of this section.

(g) Small program rates. For each award year, the Secretary--

(i) Determines the total number of students who completed small programs within a credential level at the institution during the four-year cohort period; and

(ii) If that total is 30 or more students, calculates the small program rates for those small programs under the provisions of this section.

§ 668.405 Issuing D/E rates.

(a) Administrative data. In calculating the D/E rates for a GE program and the small program rates, the Secretary uses student enrollment, disbursement, and program data, or other data the institution is required to report to the Secretary to support its administration of, or participation in, the title IV, HEA

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programs. In accordance with procedures established by the Secretary, the institution must update or otherwise correct any reported data no later than 60 days after the end of an award year.

(b) Process overview. The Secretary uses the administrative data to—

(1) Compile a list of students who completed each GE program during the cohort period and a list of the completers in small programs. The Secretary removes from those lists students who are excluded under §668.404(e) and provides the list to institutions;

(2) Obtain from a Federal agency with earnings data the median annual earnings of the students on each list, as provided in paragraph (c) of this section; and

(3) Calculate the D/E rates and provide them to the institution.

(c) Obtaining earnings data. For each list submitted to the Federal agency with earnings data, the agency returns to the Secretary--

(1) The median annual earnings of the students on the list whom the Federal agency with earnings data has matched to earnings data, in aggregate and not in individual form; and

(2) The number, but not the identities, of students on the list that the Federal agency with earnings data could not match.

(d) Calculating D/E rates.

(1) If the Federal agency with earnings data includes reports from records of earnings on at least 30 students, the Secretary uses the median annual earnings provided by the Federal agency with earnings data to calculate the D/E rates for each GE program or the small program rate, as provided in §668.404.

(2) If the Federal agency with earnings data reports that it was unable to match one or more of the students on the final list, the Secretary does not include in the calculation of the median loan debt the same number of students with the highest loan debts as the number of students whose earnings SSA did not match. For example, if the Federal agency with earnings data is unable to match three students out of 100 students, the Secretary orders by amount the debts of the 100 listed students and excludes from the D/E rates calculation the three largest loan debts.

§ 668.406 Determination of the D/E rates.

(a) Notice of determination. For each award year for which the Secretary calculates D/E rates for a GE program or the small program rate, the Secretary issues a notice of determination informing the institution of the following:

(1) The D/E rates for each GE program and for its small programs as determined under §668.404;

(2) The determination by the Secretary of whether each GE program is passing, failing, or ineligible, as described in §668.403, and the consequences of that determination;

(3) Whether the program could become ineligible based on its final D/E rates for the next award year for which D/E rates are calculated for the program; and

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**(4) Whether the institution is required to provide the student warning under §668.407.**

**(b) Effective date of Secretary's determination.** The Secretary's determination as to the D/E rates measure is effective on the date that is specified in the notice of determination.

**§ 668.407 Consequences of the D/E rates.**

**(a) Student warning.**

**(1) Events requiring a warning to students and prospective students.** The institution must provide a warning with respect to a GE program to students and prospective students for any year for which the Secretary notifies an institution that the program could become ineligible based on its D/E rates for the next award year.

**(2) Content of warning.** The institution must provide—

**(i) The relevant information to access the website maintained by the Secretary;**

**(ii) A warning, as specified by the Secretary in a notice published in the *Federal Register*, that the program has not passed standards established by the U.S. Department of Education and may face restrictions on enrollment and/or could lose access to Federal grants and loans in the subsequent award year; and**

**(iii) A statement that the student must attest to having seen the warning through the disclosure website established and maintained by the Secretary.**

**(iv) For warnings provided to enrolled students--**

**(A) A description of the academic and financial options available to students to continue their education in another program at the institution, including whether the students could transfer credits earned in the program to another program at the institution and which course credits would transfer, in the event that the program loses eligibility for title IV, HEA program funds;**

**(B) An indication of whether the institution will--**

**(1) Continue to provide instruction in the program to allow students to complete the program; and**

**(2) Refund the tuition, fees, and other required charges paid to the institution by, or on behalf of, students for enrollment in the program; and**

**(C) An explanation of whether the students could transfer credits earned in the program to another institution.**

**(3) Alternative languages.** To the extent practicable, the institution must provide alternatives to the English-language student warning for those students and prospective students for whom English is not their first language.

**(4) Delivery to enrolled students.** An institution must provide the warning required under this section in writing to each student enrolled in the program no later than 30 days after the date of the Secretary's

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notice of determination under §668.406 and maintain documentation of its efforts to provide that warning.

**(5) Delivery to prospective students.**

(i) An institution must provide the warning as required under paragraph (2) of this section to each prospective student or to each third party acting on behalf of the prospective student at the first contact about the program between the institution and the student or the third party acting on behalf of the student by—

(A) Hand-delivering the warning and the relevant information to access the website maintained by the Secretary as a separate document to the prospective student or third party individually, or as part of a group presentation;

(B) Sending the warning and the relevant information to access the website maintained by the Secretary to the primary email address used by the institution for communicating with the prospective student or third party about the program, provided that the warning is the only substantive content in the email and that the warning is sent by a different method of delivery if the institution receives a response that the email could not be delivered; or

(C) Providing the warning and the relevant information to access the website maintained by the Secretary orally to the student or third party if the contact is by telephone.

(ii) An institution may not enroll, register, or enter into a financial commitment with the prospective student with respect to the program earlier than three business days after the student completes the attestation in subparagraph (a)(2)(iii).

**(b) Restrictions.**

(1) Ineligible program. Except as provided in §668.26(d), an institution may not disburse title IV, HEA program funds to students enrolled in an ineligible program.

(2) Period of ineligibility. An institution may not seek to reestablish the eligibility of a failing program that it discontinued voluntarily either before or after D/E rates are issued for that program, or reestablish the eligibility of a program that is ineligible under the D/E rates, until three years following the date specified in the notice of determination informing the institution of the program's ineligibility or the date the institution discontinued the failing program.

(3) Restoring eligibility. An ineligible program, or a failing program that an institution voluntarily discontinues, remains ineligible until the institution establishes the eligibility of that program under §668.410(c).

**§ 668.408 Reporting requirements for GE programs.**

(a) In accordance with procedures established by the Secretary, an institution must report--

(1) For each student enrolled in a GE program during an award year who received title IV, HEA program funds for enrolling in that program—

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- (i) Information needed to identify the student and the institution;
- (ii) The name, CIP code, credential level, and length of the program;
- (iii) Whether the program is a medical or dental program whose students are required to complete an internship or residency, as described in § 668.402;
- (iv) The date the student initially enrolled in the program;
- (v) The student's attendance dates and attendance status (e.g., enrolled, withdrawn, or completed) in the program during the award year; and
- (vi) The student's enrollment status (e.g., full-time, three-quarter time, half-time, less than half-time) as of the first day of the student's enrollment in the program;

(2) If the student completed or withdrew from the GE program during the award year—

- (i) The date the student completed or withdrew from the program;
- (ii) The total amount the student received from private education loans, as described in § 668.404(d)(1)(ii), for enrollment in the program that the institution is, or should reasonably be, aware of;
- (iii) The total amount of institutional debt, as described in § 668.404(d)(1)(iii), the student owes any party after completing or withdrawing from the program;
- (iv) The total amount of tuition and fees assessed the student for the student's entire enrollment in the program; and
- (v) The total amount of the allowances for books, supplies, and equipment included in the student's title IV Cost of Attendance (COA) for each award year in which the student was enrolled in the program, or a higher amount if assessed the student by the institution;

(3) As described in a notice published by the Secretary in the *Federal Register*, any other information the Secretary requires the institution to report.

(b)(1) An institution must report the information required under paragraphs (a)(1) and (2) of this section no later than—

- (i) July 31, following the date these regulations take effect, for the second through seventh award years prior to that date;
- (ii) For medical and dental programs that require an internship or residency, July 31, following the date these regulations take effect for the second through eighth award years prior to that date; and
- (iii) For subsequent award years, October 1, following the end of the award year, unless the Secretary establishes different dates in a notice published in the *Federal Register*.

(2) For any award year, if an institution fails to provide all or some of the information required under paragraph (a) of this section, the institution must provide to the Secretary an explanation, acceptable to the Secretary, of why the institution failed to comply with any of the reporting requirements.

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**§ 668.409 Supplementary performance measures.**

**(a) General.** The Secretary assesses and analyzes the following information prior to issuing an institution a new Program Participation Agreement, and may consider the information in determining whether to certify, or condition the participation of, an institution under §668.13 and 668.14--

**(1) Withdrawal rate.** The percentage of students in the enrollment cohort who withdrew from the institution within 100 percent or 150 percent of the length of the program.

**(2) Debt-to-earnings rates.** The debt-to-earnings rates under §668.403, if applicable.

**(3) Small program rates.** The small program rates under §668.404(g), if applicable.

**(4) Instructional, advertising, and administrative expenses.** The amounts the institution spent on instruction/instructional activities; advertising or recruiting activities; and administrative activities, which include the salaries and compensation of the owners and principal officers, as provided through a disclosure in the audited financial statements required under §668.23(d).

**(5) Job placement rate.** If the institution is required by its accrediting agency or State to calculate a placement rate for either the institution or a program, or both, the placement rate or rates, calculated using the methodology required by that accrediting agency or State, and the name of that accrediting agency or State.

**§ 668.410 Certification requirements for GE programs.**

**(a) Transitional certification for existing programs.**

**(1)** Except as provided in paragraph (a)(2) of this section, an institution must provide to the Secretary no later than December 31 of the year in which this regulation takes effect, in accordance with procedures established by the Secretary, a certification signed by its most senior executive officer that each of its currently eligible GE programs included on its Eligibility and Certification Approval Report meets the requirements of paragraph (d) of this section. The Secretary accepts the certification as an addendum to the institution's program participation agreement with the Secretary under §668.14.

**(2)** If an institution makes the certification in its program participation agreement pursuant to paragraph (b) of this section between July 1 and December 31 of the year in which this regulation takes effect, it is not required to provide the transitional certification under this paragraph.

**(b) Program participation agreement certification.** As a condition of its continued participation in the title IV, HEA programs, an institution must certify in its program participation agreement with the Secretary under §668.14 that each of its currently eligible GE programs included on its Eligibility and Certification Approval Report meets the requirements of paragraph (d) of this section. An institution must update the certification within 10 days if there are any changes in the approvals for a program, or other changes for a program that make an existing certification no longer accurate.

**(c) Establishing eligibility and disbursing funds.**

**(1)** An institution establishes the eligibility for title IV, HEA program funds of a GE program by updating the list of the institution's eligible programs maintained by the Department to include that program, as provided under 34 CFR 600.21(a)(11)(i). By updating the list of the institution's eligible programs, the

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institution affirms that the program satisfies the certification requirements in paragraph (d) of this section. Except as provided in paragraph (c)(2) of this section, after the institution updates its list of eligible programs, the institution may disburse title IV, HEA program funds to students enrolled in that program.

(2) An institution may not update its list of eligible programs to include a GE program, or a GE program that is substantially similar to a failing program that the institution voluntarily discontinued or became ineligible as described in §668.407(b), that was subject to the three-year loss of eligibility under §668.407(b), until that three-year period expires.

(d) GE program eligibility certifications. An institution certifies for each eligible program included on its Eligibility and Certification Approval Report, at the time and in the form specified in this section, that each eligible GE program it offers is approved by a recognized accrediting agency or is otherwise included in the institution's accreditation by its recognized accrediting agency, or, if the institution is a public postsecondary vocational institution, the program is approved by a recognized State agency for the approval of public postsecondary vocational education in lieu of accreditation.

#### **§ 668.411 Severability.**

If any provision of this subpart or its application to any person, act, or practice is held invalid, the remainder of the subpart or the application of its provisions to any person, act, or practice shall not be affected thereby.

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#### **§ 668.43 Institutional and programmatic information.**

\* \* \*

##### **(d)**

(1) Disclosure website. An institution must provide such information as the Secretary prescribes through a *Federal Register* notice for disclosure to prospective and enrolled students through a website established and maintained by the Secretary. The Secretary will conduct consumer testing to inform the design of the website. The Secretary may include on the website, among other disclosures:

- (i) The primary occupations (by name and/or SOC code) that the program prepares students to enter, along with links to occupational profiles on O\*NET ([www.onetonline.org](http://www.onetonline.org)) or its successor site.
- (ii) As reported to or calculated by the Secretary, the program's completion rates for full-time and less-than-full-time students and the program's withdrawal rates.
- (iii) The length of the program in calendar time (i.e., weeks, months, years).
- (iv) The total number of individuals enrolled in the program during the most recently completed award year.
- (v) As calculated by the Secretary, the loan repayment rate for students or graduates who entered repayment on title IV loans during a period determined by the Secretary.

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(vi) The total cost of tuition and fees, and the total cost of books, supplies, and equipment, that a student would incur for completing the program within the length of the program.

(vii) Of the individuals enrolled in the program during the most recently completed award year, the percentage who received a title IV loan and/or a private loan for enrollment in the program.

(viii) As calculated by the Secretary, the median loan debt of students who completed the program during the most recently completed award year or for all students who completed or withdrew from the program during that award year.

(ix) As provided by the Secretary, the median earnings of students who completed the program or of all students who completed or withdrew from the program, during a period determined by the Secretary.

(x) Whether the program is programmatically accredited and the name of the accrediting agency, as reported to the Secretary.

(xi) The supplementary performance measures in § 668.409.

(xii) A link to the U.S. Department of Education's College Navigator Web site, or its successor site, or other similar Federal resource.

(2) Program web pages. The institution must provide a link and any needed information to access the website maintained by the Secretary on any web page containing academic, cost, financial aid, or admissions information about the program. The Secretary may require the institution to modify a webpage if the information is not sufficiently prominent, readily accessible, clear, conspicuous, or direct.

(3) Distribution to prospective students. The institution must provide the relevant information to access the website maintained by the Secretary to any prospective student (as defined in 34 CFR 668.402), or a third party acting on behalf of the prospective student, before the prospective student signs an enrollment agreement, completes registration, or makes a financial commitment to the institution.

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**Additional Accountability Metrics for Consideration:**

Initial analysis suggests that some programs that would otherwise pass the D/E rates due to relatively low debt levels have very low levels of earnings. Those students may have financed the program using their own funds, Pell Grants, student loans (at low enough levels to pass the D/E rates), other Federal aid, or the program may have been financed by employers or other private third parties. During our last session, several negotiators suggested adding an earnings metric, based on the difference between the median earnings of program graduates and a threshold level of earnings to measure the “earnings premium” provided by that program, to address programs with low earnings. The threshold for a passing earnings premium could be specified in several different ways, such as:

1. The **median earnings of a high school graduate in that same state** the program is located (where passing indicates the median completer earns more than had they not pursued a postsecondary education). Nationally, the median high school graduate earned about \$20,300 in 2019 – roughly the same as the average earnings for a full-time, full-year worker (i.e., 2,000 hours of work per year) earning their state or local minimum wage. Among only high school graduates who are working (those with positive earnings), the rate is about \$25,000.
2. A **multiple of the Federal Poverty Guideline** (where passing suggests that the median graduate earns enough to afford basic necessities). The Federal Poverty Guideline in the same year was \$12,490, so 150% of the Guideline would be \$18,735. Note that the Federal Poverty Guideline is a national standard, so would not reflect geographic differences in wage levels.
3. An estimate of **full-time minimum wage work** (where passing suggests the median graduate earns at least that of a full-time minimum wage worker). The Federal minimum wage is \$7.25 per hour, but the state minimum wage varies up to \$15.20 per hour in Washington, D.C.
4. An alternative way to address programs with low earnings could be to simplify the 2014 DTE framework by **eliminating the annual debt to earnings (aDTE) metric**, requiring only that programs pass the discretionary DTE (dDTE) rate. In the 2014 structure, the aDTE allows programs with lower earnings (especially those with median earnings below 150% FPL) to pass the GE framework as long as their debt payments were below 8 percent of their earnings. Eliminating the aDTE would mean that programs with very low earnings (but relatively low debt levels) fail the GE metrics. Programs with median debt levels of zero (e.g. where fewer than half of their students borrow) and very low earnings, however, would continue to pass the rule (unlike with an earnings premium threshold).

We invite feedback from the committee about the merits and potential downsides of each of these alternate accountability frameworks.

*Last updated 2/4/2022*

Feb. 14, 2022  
Request For  
Judicial Notice  
Exh. B